



Billing Code 8025-01

SMALL BUSINESS ADMINISTRATION

13 CFR Part 107

RIN 3245-AG67

Small Business Investment Companies: Passive Business Expansion and Technical Clarifications

AGENCY: U.S. Small Business Administration.

ACTION: Final rule; delay of effective date.

SUMMARY: On December 28, 2016, the Small Business Administration (SBA) published a final rule to expand permitted investments in passive businesses and provide further clarification with regard to investments in such businesses for the Small Business Investment Company (SBIC) Program, with an effective date of January 27, 2017. On January 26, 2017, SBA published a delay of effective date until March 21, 2017 and re-opened the rule for additional public comment in response to the memorandum dated January 20, 2017 from the Assistant to the President and Chief of Staff, entitled “Regulatory Freeze Pending Review.” SBA requires additional time to consider this final rule and determine whether any further changes are required; therefore, the effective date for this final rule is delayed until May 20, 2017. Any changes to the final rule based on this redetermination will be published in the Federal Register.

DATES: As of March 21, 2017, the effective date of the SBA final rule published December 28, 2016 (81 FR 95419), and delayed January 26, 2017 (82 FR 8499), is further delayed until May 20, 2017.

FOR FURTHER INFORMATION CONTACT: Theresa Jamerson, Office of Investment and Innovation, (202) 205-7563 or sbic@sba.gov.

SUPPLEMENTARY INFORMATION: The U.S. Small Business Administration (SBA) Final Rule: Small Business Investment Companies: Passive Business Expansion and Technical Clarifications, 81 FR 95419 (December 28, 2016), had an effective date of January 27, 2017. The January effective date was delayed to March 21, 2017, and the comment period was reopened until February 19, 2017. 82 FR 8499 (Jan. 26, 2017). This new delay of effective date will provide 60 additional days for SBA to further analyze questions of fact, law, and policy related to this rulemaking, in accordance with OMB Memorandum #M-17-16, Implementation of Regulatory Freeze (Jan. 24, 2017). SBA will use the supplemental time to assess the additional comments it received through February 19, 2017, and will further consider the rule's impact on the SBIC program and program participants. SBA will also use the supplemental time to make necessary determinations regarding the effects of the final rule on the examining and liquidation functions of the SBA's Office of Investment and Innovation.

SBA is considering revising the regulations for the Small Business Investment Company (SBIC) program to expand permitted investments in passive businesses and provide further clarification with regard to investments in such businesses. SBICs are generally prohibited from investing in passive businesses under the Small Business Investment Act of 1958, as amended (Act). SBIC program regulations provide for two exceptions that allow an SBIC to structure an investment utilizing a passive small business as a pass-through. The first exception provides conditions under which an SBIC

may structure an investment through up to two levels of passive entities to make an investment in a non-passive business that is a subsidiary of the passive business directly financed by the SBIC. The second exception, prior to this final rule, enabled a partnership SBIC, with SBA's prior approval, to provide financing to a small business through a passive, wholly-owned C corporation (commonly known as a blocker corporation), but only if a direct financing would cause the SBIC's investors to incur Unrelated Business Taxable Income (UBTI). This final rule clarifies several aspects of the first exception and in the second exception eliminates the prior approval requirement and expands the purposes for which a blocker corporation may be formed. The final rule also adds new reporting and other requirements for passive investments to help protect SBA's financial interests and ensure adequate oversight and makes minor technical amendments. Finally, this rule makes a conforming change to the regulations regarding the amount of leverage available to SBICs under common control. This change is necessary for consistency with the Consolidated Appropriations Act, 2016, which increased the maximum amount of such leverage to \$350 million from \$225 million.

Dated: March 10, 2017

A. Joseph Shepard
Associate Administrator, Office of Investment and Innovation
[FR Doc. 2017-05533 Filed: 3/20/2017 8:45 am; Publication Date: 3/21/2017]